

# THE MOUNTAINEER.

GREAT SALT LAKE CITY.  
SATURDAY, OCTOBER 1, 1859.

## THE ADMINISTRATION OF JUSTICE IN UTAH.

We have heard for a year or two back a great deal of talk about administration of justice in Utah. We were led to inquire, in our own minds, why it was that parties, named and ranked as old offenders, were not summarily brought to justice.

We have said, and said so in earnest, that we do not wish to make an issue on quarrelsome terms with anybody. But here we are obliged to query. An old established system appears to have given the world an idea that a Probate Court means only an establishment wherein a grey haired old gentleman, illustrious for his charities, has an opportunity of telling widows and orphans what to do for themselves, or for one another, and how to squander or save their means.

In organizing the judiciary of our Territory, the Congress of the United States wisely and prudently vested in the Probate Courts a jurisdiction, at least, concurrent with the Courts of the United States in Territorial matters, or at least permitted the Legislature to do so. Some of the Courts have contended that the old established system should prevail; that the jurisdiction of a Probate Court should be confined to divorces, wills, estates of decedents &c. We believe in no such sentiments, however learnedly expressed. There is the organic act in plain terms. What does it say? "That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, and in Justices of the Peace." And again that "the jurisdiction of the several Courts, herein provided for, both appellate and original, and that of the Probate Courts, shall be as limited by law." The jurisdiction of Justices of the Peace in the same act is plainly marked out, and the power taken away from the Territorial Legislature to extend it. No such limits are marked for either of the other Courts. That was unmistakably left as the business of our home Legislature.

Now suppose that the power, herein vested, had been exercised in another manner. Suppose that Criminal jurisdiction had been entirely withheld under the Territorial laws, from the U. S. Courts. This the Territorial Legislature had a right, assuredly, to do. What then would have been the style and purport of bench-declamations? Would the judges, in that case, as in the other, have transformed themselves into law-makers?

The language of the Organic Act is simple and easy to be understood. The language of our own statutes, conformatory thereto, is equally so. Congress gave the power and the legislature of Utah used it wisely, prudently, fairly, and with a conscientious view to the administration of justice.

The question may here be asked; to what extent has the judiciary power to control the legislature? Has it power to pronounce a law null and void on the grounds of inconsistency, uselessness, or as being contrary to ancient usage? Or is it not limited to questions of Constitutionality, and the interference of a less with a greater power? In other words, should Congress pass an act, that was clearly contrary to the provisions of the Constitution, the proper judiciary would have a right, when the question came judicially before it, to interpose in favor of the Constitution. So again, should a Territorial Legislature pass an Act that was clearly contrary to the provisions of the Constitution and laws of the United States, the judiciary would have a right, not to drag the question up, but when properly before it, to interpose in favor of the superior authority.

This far have they a right to go and no further. It is not their province to decide upon questions of public policy; nor glance gloomily around the

horizon to ascertain what fearful results may accrue from the proceedings of the legislative department. Such an assumption of power on their part would place the least of the three great departments of government superior to all.

In defense of the necessity of a permanent judiciary, that is, of the institution or department itself being a permanent one, an eminent jurist says: "The object of the constitution was to establish three great departments of government; the legislative, the executive and the judicial department. The first was to pass laws, the second to approve and execute them, and the third to expound and enforce them." In Utah, for the first time that we remember, have we heard of any greater assumption of power on the part of the judiciary. To approve or veto is the province alone of the executive department. Yet in Utah, the judiciary have assumed not only the veto right, but the executive also.

Some time in February, 1852, the Civil and Criminal jurisdiction, now claimed by the Probate Courts, was vested in them by our Territorial legislature. At the session of Congress, next subsequent thereto, the Code of Utah was presented in the House of Representatives and submitted to a committee. Congress have reserved to themselves alone the right to veto laws in the Territories, after having once passed, and been approved by the Territorial Executive. The jurisdiction of the Probate Courts, after having passed the legislature, and been approved in the legal manner, was finally sanctioned by Congress. And now, after nearly seven years, some gentlemen lawyers, who have picked up their law, most probably, from their own pleadings, leave home, and among the lofty peaks of Wahsatch assume to know more than the congregated legislature wisdom of the nation.

Where are the arguments in favor of their assumptions? We are open to conviction; and if we have labored under an error, even though it has been for twenty years, we will submit to fair reasoning and law. The only attempt at an argument on the subject was once and once only made in the Territory. It was then contended that the very meaning of the word was against the jurisdiction of the Probate Courts. What does it mean? Simply, proof. Upon that, in the organization of Courts for the probate, or proof of wills, was the term first applied to that species of Courts. But the extent of their jurisdiction, whether it be limited to the proof of wills, or extended to the proof of, and adjudication upon everything that comes under the supervision of the law, has invariably been left to the wisdom and discretion of the State and Territorial legislatures respectively.

In Ohio they have given their Probate Courts jurisdiction of all crimes or misdemeanors, under penitentiary, and that has not been questioned; nay, the jurisdiction of those Courts has been sustained by one of the highest judicial tribunals of the land. And English words, or even Latin, if preferred, bear the same meaning in Ohio as in Utah.

Since the assumption of this power to nullify by the U. S. Courts, what has been the consequence? Crime has gone unpunished. Murderers are permitted to escape, or remain years in jail without a trial. Felons run at large, and the judiciary remain idle in their chambers.

From the Probate Courts the law has given the power of appeal. Why was not the proper course taken, and the question tried judicially, and not in a pompous, arbitrary manner?

No, no! The object of these men who have come from afar, has not been to punish crime, but to play at politics and make trouble. So we think.

**HOMESTEADS.**—The question has often been asked us, Why has the Legislature not passed a law exempting from execution the homesteads of the citizens of Utah? We have invariably answered,

that it would be a work of supererogation. This to some may need an explanation. To such we would simply say, that the Legislature is not authorized, but actually prohibited, by the organic act, from passing a law affecting the right of the soil. The question need not be asked or answered, in regard to the right of soil in Utah Territory. It lies in the government of the United States. Not a foot of the land is bona fide the property of the citizens. Then how can the Legislature pass an act, exempting from execution that over which they or their constituents have no control. This, to the mind of many, may not be sufficiently plain. Then we present it in another light. Can the Legislature exempt improvements on lands that are not owned by the citizens? No, they cannot. The same right of occupancy that belongs to an individual on a tract of his own land held in fee simple, belongs also to the government on the public domain. Whoever attempts to oust an occupant from his possession on government lands, except by an act of Congress, and in the name of the President of the United States, is a trespasser, and can lawfully be resisted as such, and made responsible for his intrusion.

These deductions may appear strange to some; they are nevertheless true. Homestead exemptions are made in most of the States. The citizens own the land, and the legislators, being the representatives of their constituents, have a right to exempt certain property from execution. The wisdom of the majority of legislators induces them to give to the head of a family the homestead. We feel satisfied with that policy, and recommend the Legislature of Utah to adopt the same, so soon as one citizen shall possess legally an acre of ground in Utah, but not until then. "Nemo protestus ius iuratum transferre quam ipso habet." No one may convey greater right to another than he himself has.

**COMMUNICATIONS.**—We appropriate a portion of the MOUNTAINEER to contributions from the public. We think a "people's corner" will furnish opportunity for the appearance of many interesting thoughts and much useful information. We wish to become acquainted with the mind of the million—what they know, what is in them, what they are thinking about, what their experience and opinions are concerning subjects of current interest. An interchange of thought may be very beneficial, and we will do what we can to promote it. Send on your communications, then, and if we deem them appropriate for the public eye, our readers shall have the benefit of their perusal, as far as our space will permit.

**MONS. BLONDIN'S FEATS.**—Many of the Eastern papers have published thrilling accounts of the feats of Mons. Blondin on the tight rope across the stream at Niagara Falls. A correspondent of the New York Times says the whole matter was a hoax. No such feats were performed at the Falls, and no such person as Mons. Blondin was there, though it was ludicrous to see the chop-fallen countenances of the immense crowds assembled through the public announcements of what was to be done. The public must believe which it pleases.

**THE DIARRHEA.**—Many people, and especially children, are suffering from the diarrhea, and some children are dying of it. Cannot a good and efficacious remedy be advised for this wasting disease? Who knows the best cure? We have heard of fifty things. Will not some experienced person send us the result of their observations in the shape of a simple and specific antidote? Then we will make it public, for the public good. Glancing over the works of Dr. Franklin, the other day, we saw that he recommended, from his own experience, frequently repeated swimming, or a warm bath. He said that he had found this very salutary, and that it often effected a radical cure. Have any of our citizens tried this?

**A SENATOR KILLED.**—We learn with regret from Mr. Henry Lawrence, of the firm of J. B. Kimball & Co., of this city, who has just returned from California, that Senator Broderick was killed by Judge Terry in a duel at San Francisco, on the 12th instant. Judge Terry challenged Broderick. They fought at ten paces, with Derenger pistols. At the word, Broderick fired to the ground, when Terry took deliberate aim and shot Broderick through both lungs. McKibben, Broderick's second, challenged Terry on the ground. Latham is elected Governor. Democracy is triumphant in California.

**THE HERO OF SAN JACINTO, GEN. SAM. HOUSTON.**—We learn from the Galveston Civilian, of August 13th, that they think Gen. Houston is elected Governor of Texas, by a vote of ten or twelve thousand majority. The Texans are again right.

**CALVES.**—Is it right that young calves should be turned loose in the streets, and sometimes in the lots? It is a comparatively easy matter to fence out cows and cattle in general. But it is not everybody that can fence in his lot to himself with a picket or board fence, or a cobble-stone wall; for scarcely any other fence is proof against calves, which can creep through a hole a foot square. It is rather vexatious to buy and plant, and water and prune trees, and have them gnawed down every year by a herd of calves. Have not those who feed calves a right to the veil? We rather think they could reasonably claim a share.

**GREELEY IN UTAH.**  
The New York Tribune, of Sep. 3, contains two letters from Horace Greeley, dated Salt Lake City.

He first describes his interview with Brigham Young, President of the Mormon Church, detailing the conversation which ensued on the "doctrines and polity of the Mormon Church."

Mr. Greeley speaks as follows—

"A. P. Young is the first minister in the Mormon Church, and here the principal part in the conversation, I have reported his answers alone to my questions and observations. The others appeared to uniformly defer to his views, and to acquiesce fully in his responses and explanations. He spoke readily, not always with grammatical accuracy, but with no appearance of hesitation or reserve, and with no apparent desire to conceal anything, nor did he regard any of my questions as impertinent. He was very plain in his manner, and his answers were direct and to the point. In appearance, he is a fairly, frank, good-natured, but rather taciturn man of fifty-five, seemingly to enjoy life, and to be in no particular hurry to go to heaven. His associates are plain men, evidently born and reared to a life of labor, and looking as little like literary hypocrites or scholars as any body of men I ever met. The absence of cant or affect in their manner was marked and general, yet I did not fail to say that the Mormonism has not impoverished them—that they were generally poor men when they embraced it, and are now in very comfortable circumstances—men averaging three or four wives apiece certainly need to be."

**Of "Woman's rights and Woman's mission" he remarks—**

"But I have a right to add here, because I said to the assembled chiefs at the close of the above colloquy, that the degradation (or, if you please, the restriction) of Woman to the angle of a child-bearing and a domestic life, is an inevitable consequence of the system here paramount. I have not observed a sign in the streets, an advertisement in the journals, of the Mormon metropolis, whereby a woman proposes to do any thing whatever. No Mormon has ever cited to me his wife's or any woman's opinion on any subject. No Mormon woman has been introduced or has spoken to me; and, though I have been asked to visit Mormons in their houses, no one has spoken of his wife (or wives) desiring to see me, or his desiring me to make her (or their) acquaintance, or voluntarily to lodge the existence of such a being or beings. I will not attempt to report our talk on this subject, because, unlike what I have above given, it assumed somewhat the character of a disputation, and I could hardly give it impartially; but one remark made by President Young I think I can give accurately, and it may serve as a sample of all that was offered on that side. It was in these words, I think exactly: 'If I did not consider myself competent to instruct a certain business without taking my wife's or any woman's counsel with regard to it, I think I ought to let that business alone.' The spirit with regard to Woman, of the entire Mormonism, as of all other polygamic systems, is fairly displayed in this avowal. Let any such system become established and prevalent, and Woman will soon be confined to the home, and her appearance in the street with unveiled face will be accounted immodest. I joyfully trust that the genius of the Nineteenth Century leads to a solution of the problem of

Woman's sphere and destiny radically different from this."

He visits the Tabernacle, and thus discourses on the congregation and the services:

"Since my interview with Brigham Young, I have enjoyed opportunities for studying the Mormonism in their social or festive and in their devotional assemblies. Of private social intercourse—that is, intercomers between family and family—I judge there is comparatively little here; between Mormons and Gentiles or strangers, of course still less. Their religious services are much like those that may be shared or witnessed in the churches of most of our popular sects; the music rather better than you will hear in an average worshiping assembly in the States; the prayers pertinent and full of unctious fervor, adapted to tastes or needs different from mine. They seemed to me rambling, dogmatic, and ill digested; in fact, Elder Owen Pratt, who preached in the morning, prefaced his harangue by a statement that he had been hard at work on his farm throughout the week, and labored under consequent physical exhaustion. Elder J. H. Taylor (I believe he is one of the Twelve, at all events he is a high dignitary in the church, and a man of decided natural ability) spoke likewise in the afternoon with little or no preparation at all."

Horace believes every preacher should be a worker. He likes to see such in the hay-field, innocent of broadcloth. He can be edified by a devout, unlettered evangelist who works to support his family part of the week, and preaches in the small school-house or by the way side, in a small way, for the good of folks' souls, if he does not talk grammar, provided he talks sense. But to preach before such congregations as those in the Salt Lake City Tabernacle, a man should study, and hold sacred the rules of logic and grammar.

The discourses he heard in the Tabernacle did not edify him. They were too "intensely and exclusively Mormon." They assumed that the Mormons were God's peculiar people, and the rest of mankind were shut out of the ark. The Mormon religion was Judaic rather than Christian. Mormonism was too much like the Pharisee's prayer. Horace continues:

"Neither from the pulpit nor elsewhere have I heard from a Mormon an spontaneous, hearty recognition of the essential brotherhood of the entire human race—no generous prayer for the enlightenment and salvation of all mankind on the other hand; I have been distinctly given to understand that my interlocutors expect to sit on thrones and to bear rule over multitudes in the so-called kingdom of God. In fact, one sincere, devout man has to-day assigned to me as a reason for polygamy, 'he wants to qualify himself, by ruling a large and diversified family here, for bearing rule over a principality in the 'new earth,' that he knows to be a band. I think he might have better devoted a few years to pondering Christ's saying, 'Ye shall be as the Father, who is in heaven, the same shall be greatest.'"

I was undecided with regard to the Bank of Mormon. I had understood that it is now virtually dissolved, or at least suspended, by the Church in its services and ministrations. But Elder Pratt gave me a synopsis of its contents and tenets it thought as of equal authority and importance with the Old and New Testaments. He did not read from it, however, but from M. Bell, and quoted text after text from the Prophet, which he cited as predictions of the writing and discovery of this book.

"The congregation consisted at either service of some fifteen hundred to two thousand persons—more in the morning than in the afternoon. A large majority of them (not including the Elders and chief men, of whom a dozen or so were present) were evidently of European birth; I think the majority of the males were past the middle of life. All gave earnest heed to the 'exercises throughout; in fact, I have seldom seen a more devout and intent assembly. I had been told that the Mormons were remarkably ignorant, superstitious and brutal; but the aspect of these congregations did not sustain that assertion. Very few rural congregations would exhibit more honest and sincere devotion and I doubt whether any assemblies so largely European in its composition would make a better appearance. Not that Europeans are less intellectual or coarser than Americans; but our immigrants are mainly of the poorer classes, and poverty, privation, and rugged toil grow hard, forbidding line in the human countenance elsewhere than in Utah. Brigham Young was not present at either service."

"Do I regard the great body of these Mormons as knaves and hypocrites? Assuredly not. I do not believe there was ever a religion whereof the great mass of the adherents were not honest and sincere. Hypocrites and knaves there are in all sects; it is quite possible that some of the magnates of the Mormon Church regard this so-called religion (with all others) as a contrivance for the enslavement and fleecing of the many and the aggrandizement of the few; but I cannot believe that a sect so considerable and so vigorous as the Mormon was ever founded in conscious imposture or built up on any other basis than that of earnest conviction. If the prophet or two or three of his chief confederates were knaves, the great body of their followers were dupes."

"Nor do I accept the current Gentile presumption that the Mormons are an organized band of robbers and assassins. Thieves and murderers mainly haunt the purlieus of great cities or hide in caverns and forests ad-

herent to the great routes of travel. But when the Mormon leaders decided to set up their Zion in these parched mountain-lands and canyons, the said valleys were utterly secluded and remote from all Gentile approach—away from any main route or channel of emigration. That the Mormons wished to secure Gentile control, secretly, just-prudence, is evident; that they meant to abuse their inaccessibility, to the detriment and plunder of wayfarers, is not credible."

He thinks some of the tales of Mormon outrage and crime may have been fabricated by Gentile malice, others exaggerated, but there is some basis of truth for the current conviction of Mormon guilt, and that "Mormon witnesses, grand jurors, petit jurors, and magistrates determinedly screen the guilty."

He thus sums up the case:

"The vital fact in the case is just this: The great mass of these people, as a body, mean to be honest, just, and humane; but they are, before and above all things, Latter-day Saints, or Mormons. They devoutly believe that they are God's peculiar and favored people, doing His work, up-building His kingdom, and looking to the sunshine of His peculiar favor. Whoever obstructs or impedes them in this work, then, is God's enemy, who must be made to get out of the way of the establishment of Christ's kingdom on earth—made to do so by lawful and peaceful means if possible, but by any means that may ultimately be found necessary."

He thinks the majority of the Mormons innocent. But some are guilty and know that certain crimes have been committed here. He says:

"And I confidently predict that not one Mormon who has killed a Gentile or apostate under a live view of his duty will ever be fully convicted in this Territory. No jury can be drawn here, unless in flagrant defiance of the Territorial laws, which is not usually composed of Mormons; and no such jury will convict a Mormon of crime for any act done in behalf of God's kingdom—that is, of the Mormon Church. I ask, then, the advocates of 'Popular Sovereignty' in the Territories to say what they propose to do in the premises. How do they intend to adapt their principle to the existing state of facts? They have superseded Brigham Young, with a full knowledge that at least nine-tenths of the People of Utah are justly desirous of his return as Governor. They have sent him a batch of Judges, who would like to earn their salaries; but the Mormon Legislature decries its sessions principally to the work of clipping and fettering these Judges, so that they shall remain here as mere drones, or be driven into exile."

To it just as all are drawn for them by Mormon officials, under regulations which virtually exclude all but Mormons from each panel; it is a violation of the laws of Utah to cite in argument before any jury or jury here the decisions of any court—even the Supreme Court of the United States—but the courts of Utah; and that even the Dead Sea decision could not lawfully be cited here in a Federal case; in short, the Federal Judiciary, the Federal Executive, and the Federal Army, as now existing in Utah, are three traitorous shams—three egregiously false—they are costing the Treasury very large sums to no purpose; and the sooner the Governor, Marshal, Judges, &c., resign, and the Army is withdrawn, the better for all that stand for a contract of 'Popular Sovereignty' is a scandalous hoax that Brigham Young carries the Territory in his pocket without a shadow of opposition; he governs without responsibility to either law or public opinion; for there is no real power here but that of the Church, and he is practically the Church. The Church is rich, and is hourly increasing in wealth; the Church settles all civil controversies—wherever cause lawless; the Church spends little or nothing, yet rules everything while the Federal Government, though supreme in Utah, does nothing; it is a puppet show, and keeping up a busy parade of authority, is powerful and despotic. If, then, we are to have 'Popular Sovereignty' in the Territories, let us have it pure and without shams. Let Brigham be deposed; let the Judges and the Governor be deposed; let the Army be withdrawn; let the country be in the hands of the people, and let the people, if they choose to pass through Utah, they will do so at their own risk. Let the Mormons have the Territory to themselves—it is worth very little to others, but reduce its area by cutting off Cannon Valley on the one side, and making a Rocky Mountain Territory on the other, and then let them go on their way rejoicing. I believe this not only by far the cheapest but the safest and best mode of dealing with the difficulties already developed and daily developing here, a less the notion of 'Popular Sovereignty' in the Territories is to be utterly exploded and given up. 'Popular Sovereignty' in a Territory is a contradiction in terms; but 'Popular Sovereignty' in a Territory backed by a thousand sharp Federal bayonets and a battery of flying artillery is too monstrous a facility, too transparent a snare, to be much longer upheld or tolerated."

## LOCAL NEWS.

**SUICIDE.**—Mr. John Gheen, of this city, committed suicide on last Monday night by shooting himself through the head.

**SYRUP.**—We found on our table yesterday a bucket full of syrup, sugar cane syrup, and on inquiry learned it was from the sugar works of Mr. Joseph Young, of this city, who has recently established himself in the 13th Ward, and is prepared to work up the sugar cane crops of his friends and neighbors. Give him a call, if you want a good article.